IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 46 OF 2003.

State ... Appellant.

Versus

1. Raghuvir Janardhan Naik,
2. Vishwambar Rama Naik,
3. Avinash Rama Naik,
4. Navnath Raghuvir Naik,
   all r/o Madhalawada Menkurem,
   Bicholim. ... Respondents.

Mr. S.N. Sardessai, Public Prosecutor for the Appellant/State.

Mr. M.S. Joshi, Advocate for the Respondents.

Coram : P.V. HARDAS, J.

Date : 24th November 2003.

ORAL JUDGMENT.

The State, being aggrieved by the acquittal of the respondents for offences punishable under Sections 325, 323 and 504 read with Section 34 of the Indian Penal Code by the Judicial Magistrate, First Class, Bicholim, by Judgment, dated 23rd January 2003, in Criminal Case No. 42/S/01/C, has filed the present appeal.

2. The facts in brief, as are necessary for the decision of the appeal, are set out hereunder:-

On 9th May 2001, a complaint came to be lodged by P.W.2 Shiva Naik against the present respondents, which was treated as non-cognizable. P.W.2 Shiva was,

however, referred to the Bicholim Primary Health Centre and, thereafter, to the Asilo Hospital. At the Primary Health Centre, P.W.2 Shiva was examined by P.W.6 Dr. Medha Salkar, who found two injuries, that is, (1) contusion of left upper arm, linear in shape, caused by blunt object and was of a duration of 4 to 6 hours and (2) contusion linear wound 1 x .5 cms. on the dorsal surface of left middle finger. The injury was caused by using a hard irregular shape object and the duration of the injury was 4 to 6 hours. P.W.2 Shiva was further examined at the Asilo Hospital, on 9th May 2001, by P.W.7 Dr. Agnes Mascarenhas, who, by her certificate, at Exhibit P.W.7/A, opined that there was evidence of fracture of the left eleventh rib. The date below the signature of P.W.7 Dr. Mascarenhas is shown as 28th August 2002. The trial Court then examined P.W.8 P.S.I. Nauso Gauns. According to him, he received the certificate regarding the fracture on 16th August 2001 and, accordingly, requested the complainant, that is, P.W.2 Shiva to lodge a formal report. On the next day, that is, 17th August 2001 the complainant lodged the report at Exhibit P.W.2/A on the basis of which offences under Sections 325, 323, and 504 read with Section 34 of the Indian Penal Code came to be registered. The scene of offence panchanama was, thereafter, drawn in the presence of P.W.1 Dattaram Yeshwant Naik. The scene of offence panchanama is at Exhibit P.W.1/A. After

completion of the investigation, a charge-sheet against the present respondents came to be filed. The learned Judicial Magistrate, First Class, Bicholim, vide Exhibit 3 framed a charge against the respondents under the aforesaid Sections. The respondents pleaded not guilty and claimed to be tried. The prosecution examined 8 witnesses in support of its case. The defence of the respondents/accused is of denial.

3. On consideration of the oral as well as the documentary evidence, the learned trial Judge acquitted the respondents/accused principally on the ground that the evidence of the prosecution witnesses, namely, P.W.2 Shiva, P.W.3 Sangeeta and P.W.4 Vinayak, comprises of relatives, who had long standing animosity with the respondents/accused. In such circumstances, the learned trial Court found that the evidence of these witnesses could not be accepted without corroboration. The learned trial Court, therefore, examined the evidence of P.W.5 Premanand Naik, who was stated to be an independent witness and the learned trial Judge found that the evidence of P.W.5 Premanand did not corroborate the evidence of P.W.2 Shiva. In view of these circumstances, the learned trial Court acquitted the respondents/accused.

4. I have heard Mr. Sardessai, the learned

Public Prosecutor appearing on behalf of the appellant/State and Mr. Joshi, the learned counsel appearing on behalf of the respondents. With the assistance of the learned counsel for the parties, I have perused the evidence on record.

5. P.W.2 Shiva states that, on 9th May 2001, at about 5.15 p.m., he was proceeding on his scooter to Kerim and he had to pass the house of the accused. When he reached near the house of the accused, he saw accused no. 1, who after seeing him, sat in the middle of the road. P.W.2 Shiva took his scooter a little aside and proceeded forward. At that time accused no. 1 started abusing him. P.W.2 Shiva demonstrated with the accused as to why he was abusing him. Thereafter, according to P.W.2 Shiva, all the other accused came to the scene of offence and started abusing him. Accused no. 2 Vishwambar kicked the scooter, as a result of which, he fell down. P.W.4 Vinayak, who was sitting on the scooter, also fell down. According to P.W.2 Shiva, accused no. 3 came running with a pal coita and assaulted him on the left shoulder, left elbow and left side of abdomen. Thereafter, accused no. 4 lifted his father and threw him on the ground. Accused no. 1 started assaulting P.W.4 Vinayak with slaps and, thereafter, all the four accused dragged P.W.2 Shiva to a cow-dung pit and threw him in it. The accused,

thereafter, removed the stems (piddas) of palm leaves and sticks, which were kept near the fencing, and started assaulting P.W.2 Shiva. At that time P.W.3 Sangeeta intervened and in her attempt to snatch the pal coita from the hand of accused no. 3 Avinash, she received a blow of the coita on her forehead. Accused no. 3 also hit the handle of the pal coita, which was of iron, on the left side of the chest of P.W.2 Shiva. Thereafter, one Pundalik and his wife arrived on the scene of offence. In the cross-examination material contradictions about the fact that P.W.4 Vinayak was waiting for going to Kerim alongwith P.W.3 Sangeeta has been brought on record. Similarly omission in respect of the respondents/accused rushing and abusing is brought on record. Omission in respect of accused no. 3 coming rushing armed with a pal coita and assaulting P.W.2 Shiva on the left shoulder, left elbow and left side of abdomen has been proved. Omission is also brought out in respect of P.W.3 Sangeeta trying to intervene and snatch the pal coita from the hand of accused no. 3 and in the process received an injury on her forehead. It is also admitted in cross-examination that there are civil matters in the Court between him and the accused on account of property and on several occasions the accused and the complainant had filed complaints and counter complaints.

6. P.W.3 Sangeeta has been examined by the prosecution and in her evidence omission in respect of P.W.4 Vinayak being thrown down by accused no. 2 Vishwambar was brought out. P.W.4 Vinayak, father of P.W.2 Shiva, in his evidence does not show the presence of P.W.3 Sangeeta at all. Similarly P.W.3 Sangeeta states that she alongwith her father-in-law P.W.4 Vinayak were sitting behind the house near a well. However, the evidence of P.W.4 Vinayak is that he alongwith P.W.3 Sangeeta were standing by the side of the road proceeding from Pirna to Mencurem.

7. As rightly observed by the learned trial Court there was absolutely no corroboration and no thread of consistency of the evidence of P.Ws. 2, 3 and 4. The learned trial Court then examined P.W.5 Premanand. According to him, he reached the spot after P.W.2 Shiva was thrown in the cow-dung pit. He was followed by P.W.3 Sangeeta and others and on seeing them the accused ran away. The evidence of P.W.5 Premanand is, thus, in complete contradiction to P.W.2 Shiva. The evidence of the two witnesses inter se contradict each other. Thus, in my opinion, the learned trial Court was right in disbelieving the evidence. The prosecution has not made any attempts to explain as to how the certificate Exhibit P.W.7/A came to be prepared and signed by P.W.7 Dr. Mascarenhas on the day on which she was examined as

a witness. If this certificate was not available to P.W.8 P.S.I. Gauns, his claim that he asked P.W.2 Shiva to lodge the First Information Report is completely falsified.

8. This is an appeal against acquittal and the view taken by the learned trial Court appears to be a possible view taken on the basis of the evidence on record. The view of the learned trial Court is not shown to be perverse warranting interference by this Court in appeal. Accordingly, Criminal Appeal deserves to be dismissed and is dismissed.

(P.V. HARDAS)
JUDGE.

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